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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1977

No. 77-1337

UNIVERSITY OF NEVADA and the STATE OF NEVADA,
Petitioners,

VS.

JOHN MICHAEL HALL, Minor by and through his
Guardian Ad Litem John C. Hall
and PATRICIA HALL,
Respondents.

On Petition for Writ of Certiorari to the Court of Appeal
for the State of California, First Appellate District,
Division Four

BRIEF FOR RESPONDENTS IN OPPOSITION

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Subject Index

	Page
Opinions below	1
Petitioner's claim of jurisdiction	2
Questions presented	3
Statutory provisions involved	3
Statement of the case	4
Argument	6

I

The petition fails to allege any facts which would involve this court's jurisdiction under 28 U.S.C. §1257(3) ...	6
---	---

II

The petition fails to set forth any federal question	7
---	---

III

Article IV, Section 1 of the United States Constitution (full faith and credit clause) does not require California to apply Nevada's statutes	7
---	---

IV

The effect of the full faith and credit clause is to restrict the application of the doctrine of sovereign immunity when a state is conducting activities within the boundaries of another state	10
--	----

V

Nevada consented to suit in the State of California	12
Conclusion	12
Appendix.	

Table of Authorities Cited

Cases	Pages
Bradford Electric Co. v. Clapper (1932) 286 U.S. 145	8
Dixon v. Duffy (Cal. 1951) 72 S.Ct. 10, 342 U.S. 33, 96 L.Ed. 46	7
Estin v. Estin, 334 U.S. 541	10
Hall v. Nevada (1977) 74 C.A.3d 280	8
Hall v. University of Nevada (1972) 8 Cal.3d 522, 503 P.2d 1363, 105 Cal.Rptr. 355, cert. denied (1973) 414 U.S. 820	1, 5, 10, 11, 12
Hess v. Pawloski, 274 U.S. 352	12
Kroll v. Nevada Industrial Corp. (1948) 65 Nev. 174, 191 P.2d 889	12
Magnolia Petroleum Company v. Hunt (1943) 320 U.S. 430	9
Pacific Emp. Insurance Co. v. Comm'n (1939) 306 U.S. 493	8
Parden v. Terminal Railroad Company, 377 U.S. 184	11
Parker v. Brown, 317 U.S. 341	11
State v. Hudson, 231 Minn. 127, 42 N.W.2d 546	11
Young v. Razen (Ill. 1949) 69 S.Ct. 1073, 337 U.S. 235, 93 L.Ed. 1333	7

Codes

California Vehicle Code, Sections 17450-17463	4
---	---

Constitutions

United States Constitution:	
Eleventh Amendment	10
Art. IV, Sec. 1	5, 7

TABLE OF AUTHORITIES CITED

iii

Rules

Pages

California Rules of Court, Rule 29(b)	6
---	---

Statutes

Nevada Revised Statutes:	
Section 13.025	12
Section 41.031-039	3, 7
28 U.S.C., Section 1257(3)	2, 6

Texts

5 Witkin, Summary of California Law (8th Ed. 1974)	
Constitutional Law, Section 16, p. 3260	8

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OPINIONS BELOW

The opinion of the California Supreme Court is reported as *Hall v. University of Nevada*, 8 Cal.3d 522, 503 P.2d 1363, 105 Cal.Rptr. 355 (1972).

Petitioners herein previously filed a Petition for Certiorari with this Court which was denied 414 U.S. 820 (1973). Contemporaneously Petitioners filed

a Motion for Leave to File Complaint. This was also denied.

After trial in Alameda County, a judgment was entered in favor of Respondents. Petitioners then appealed again to the Court of Appeal. 74 C.A.3d 280 (1977). Petitioners then filed a Petition for Rehearing in the Supreme Court of California which was denied on December 22, 1977.

PETITIONER'S CLAIM OF JURISDICTION

The only basis for jurisdiction of this Court claimed by the petitioners is 28 U.S.C. 1257(3) (page 2 of Petition). No other ground for invoking this Court's jurisdiction is given. A reading of the opinions of the California Courts and the previous Petition for Writ of Certiorari filed with this Court in 1973 demonstrates that:

- (1) The validity of a treaty or statute of the United States is not drawn in question.
- (2) No State statute is drawn in question on the ground of it being repugnant to the Constitution treaties or laws of the United States.
- (3) No "title, right, privilege or immunity is specially set up or claimed under the Constitution, or statutes of the United States". Such a claim can only be made by citizens of the United States. The judgment against the Estate of the employee of the University of Nevada was not appealed.

QUESTIONS PRESENTED

Does the sovereignty of the State of Nevada extend into the State of California?

When the State of Nevada engages in activities within the State of California is it subject to the laws of the State of California with respect to those activities?

Does the State of California waive all of its sovereign powers by reason of any claimed immunity on the part of the State of Nevada?

When Nevada enters into activities in the State of California is it entitled to the benefits of the sovereign immunity doctrine as to those activities unless the State of California has conferred immunity by law or as a matter of comity?

Can the laws enacted by the Nevada legislature be given extraterritorial effect to regulate activities of the State of Nevada in the State of California?

STATUTORY PROVISIONS INVOLVED

Petitioners assert that Nevada Revised Statutes 41.031-039 should be given extraterritorial effect and govern the rights of California residents with reference to automobile accidents occurring in the State of California.

Neither the Supreme Court of California nor the decision of the Court of Appeal drew into question the validity of the Nevada statutes on the ground that they were repugnant to the Constitution of the United States.

STATEMENT OF THE CASE

On May 13, 1968, the plaintiffs John Michael Hall, a minor child, and his mother were in an automobile on a California highway in Placer County. The driver of the other vehicle involved in the collision drove across a dividing strip and collided head-on with the plaintiffs' vehicle. John Michael Hall, a minor child, sustained severe head injuries resulting in permanent brain injuries which have left him severely retarded and unable to care for himself or to ever be able to earn a livelihood. His mother, Patricia Hall, sustained severe physical injuries and severe emotional injuries requiring the care and treatment of psychiatrists.

The automobile which caused these injuries was a chattel owned by the State of Nevada and this chattel was voluntarily brought into the State of California by an employee of the University of Nevada. The driver of the automobile owned by the State of Nevada was killed in the accident. An estate proceeding was commenced for the deceased employee in the State of California and an Administrator of the Estate, a resident of California, was appointed in the State of California. The plaintiffs filed suit against the Administrator of the estate of the deceased employee, the University of Nevada and the State of Nevada. Service of process on the State of Nevada and the University was accomplished under the long arm provision of the Motor Vehicle Code of the State of California (California Vehicle Code Sections 17450-17463).

Service of process on the Administrator was by personal service of the Summons and Complaint in California. The Supreme Court of the State of California in *Hall v. University of Nevada*, 8 Cal.3d 522, 503 P.2d 1363, 105 Cal.Rptr. 355 (1972) *cert. denied* 414 U.S. 820 (1973) denied the motion to quash service filed by the defendants State of Nevada and University of Nevada.

The State of Nevada also filed a Motion for Leave to File Complaint with the Supreme Court of the United States which was also denied by this Court.

A trial of the action took place in Alameda County and at the trial of the action the petitioners herein moved for an Order restricting the amount of damages to Twenty-five Thousand Dollars (\$25,000.00) and for an instruction to the jury that they could only award Twenty-five Thousand Dollars (\$25,000.00) per person. Both requests were claimed to be based on Article IV, Section 1 of the United States Constitution and were denied by the Trial Court. A verdict in favor of respondents herein was returned against the Petitioners and against the Administrator of the Estate of the employee. Petitioners appealed to the Court of Appeal of the State of California. As the Court of Appeal carefully pointed out:

"Appellants motion to limit damages was denied by the Trial Court. The correctness of this ruling is the sole issue on appeal."

Petitioners herein did not file a Petition for Rehearing in the Court of Appeal to correct any mis-

statement of facts and are, under California law, bound by the narrow issue of appeal as described by the Court of Appeal (cite Rule 29(b)).

The verdict of the jury was against the petitioners herein and the Administrator of the estate of the deceased employee of the University of Nevada. The petitioners herein admitted that the deceased employee was in the course and scope of his employment at the time the accident occurred and are not disputing that their employee was negligent and that his negligence was a proximate cause of the injuries sustained by the respondents herein. However, no appeal was filed on behalf of the deceased employee and the judgment is now final, nor is any claim made that the Courts of the State of California did not acquire jurisdiction over said employee by service of process in the State of California as the Administrator of the estate of the deceased employee.

Petitioners filed a Petition for Hearing before the Supreme Court of the State of California which was denied.

ARGUMENT

I

THE PETITION FAILS TO ALLEGE ANY FACTS WHICH WOULD INVOLVE THIS COURT'S JURISDICTION UNDER 28 U.S.C. §1257(3).

The petitioners seek jurisdiction of this Court under 28 U.S.C. §1257(3); however, none of the conditions of that statute are set forth in the petition.

The only statutory provision involved, according to the Petition are Nevada Revised Statutes 41.031-41.039. However, a reading of the opinions of the California Supreme Court and of the Appellate Court does not demonstrate that these opinions asserted that the Nevada Statutes were repugnant to the Constitution of the United States.

II

THE PETITION FAILS TO SET FORTH ANY FEDERAL QUESTION

The United States Supreme Court will not review judgments of State Courts that rest on adequate independent State grounds (*Dixon v. Duffy* (Cal. 1951) 72 S.Ct. 10, 342 U.S. 33, 96 L.Ed. 46).

The United States Supreme Court will not review decisions which rest upon adequate non-federal grounds. *Young v. Razen* (Ill. 1949) 69 S.Ct. 1073, 337 U.S. 235, 93 L.Ed. 1333. The California Courts' opinions are sustainable on California's own conflict of laws and choice of law rules.

III

ARTICLE IV, SECTION 1 OF THE UNITED STATES CONSTITUTION (FULL FAITH AND CREDIT CLAUSE) DOES NOT REQUIRE CALIFORNIA TO APPLY NEVADA'S STATUTES.

Petitioners present a "tunnel vision" approach to the concept of sovereignty of the States of the Union and of the application of the Full Faith and Credit

Clause of the Constitution. In their eyes Nevada is the only sovereign state that can exercise sovereign powers. In their limited vision of the concept of Full Faith and Credit they overlook the fact that Nevada is, under that doctrine, required to give full faith and credit to the California laws as well as the California judgments. It is well settled that the purpose of the full faith and credit clause was not to give the statutes of one state extraterritorial effect in another state (5 Witkin, *Summary of California Law* (8th Ed. 1974) Constitutional Law §16, p. 3260).

The United States Supreme Court has established that a forum state may refuse to apply a sister state's statutes where such enforcement would be contrary to its own public policy (*Bradford Electric Co. v. Clapper* (1932) 286 U.S. 145, 160. *Pacific Emp. Insurance Co. v. Comm'n* (1939) 306 U.S. 493, 501-502).

The Court of Appeal of California correctly stated the law (Petitioners' Appendix v):

"Nevada must therefore rely on its final argument, namely that California's own conflict of laws rules require application of NRS 41.035 in the instant case" (*Hall v. Nevada*, 74 C.A.3d 280 (1977)).

The Court ruled that under California's conflict of laws rules the Nevada statute would not be applied.

Petitioners, in their Petition for Writ of Certiorari at pages 7 and 8, state that:

"The framers of the Constitution were not unmindful of the need to assure that the several

states would not treat each other as independent nations. Indeed, the very purpose of the Full Faith and Credit Clause was to alter the status of the individual states as independent sovereignties, each free to ignore the rights and proceedings of the other and to make each, an integral part of a single nation."

citing cases of this Court.

One of the cases cited by petitioner is *Magnolia Petroleum Company v. Hunt*, 320 U.S. 430 (1943).

The opinion in that case states at page 436:

". . . Since each of the states of the Union has constitutional authority to make its own law with respect to persons and events within its borders, the full faith and credit clause does not ordinarily require it to substitute for its own law the conflicting law of another state, even though that law is of controlling force in the Courts of that state with respect to the same persons and events". (Citing cases).

The State of California, therefore, has the Constitutional authority to make its own laws with respect to persons and events within its borders.

IV

THE EFFECT OF THE FULL FAITH AND CREDIT CLAUSE IS TO RESTRICT THE APPLICATION OF THE DOCTRINE OF SOVEREIGN IMMUNITY WHEN A STATE IS CONDUCTING ACTIVITIES WITHIN THE BOUNDARIES OF ANOTHER STATE.

This Court has held that the Full Faith and Credit Clause basically altered the status of states as independent sovereigns, *Estin v. Estin*, 334 U.S. 541, 545, 546. The doctrine of sovereign immunity is a doctrine which arose out of the Common Law. Any immunity of each state from suit is not set forth in the Constitution of the United States. The Eleventh Amendment to the Constitution of the United States only relates to the competency of the Federal Courts to render a judgment against a non-consenting state.

The doctrine of sovereign immunity has been held by this Court to be applicable to the states because of the inherent nature of sovereignty.

The California Supreme Court in *Hall v. University of Nevada* (Petitioners' Appendix xiii) stated:

"We have concluded that sister states who engage in activities within California are subject to our laws with respect to those activities and are subject to suit in California Courts with respect to those activities when the sister state enters into activities in this state. It is not exercising sovereign power over the citizens of this state and is not entitled to the benefits of the sovereign immunity doctrine as to those activities unless this state has conferred immunity by law or as a matter of comity."

The decision is not based upon any abolition of the doctrine of sovereign immunity but on the principle that there are limitations on the territorial extent of sovereignty. The immunity of a sovereign cannot extend beyond the territorial limits of the sovereign. The governments of the states are only sovereign within their territorial limits (*Parker v. Brown*, 317 U.S. 341 at page 359). Conversely the jurisdiction of a state does not ordinarily extend beyond its boundaries (*State v. Hudson*, 231 Minn. 127, 42 N.W.2d 546).

The opinion of the Supreme Court in *Hall v. Nevada, supra*, gave examples of instances where the State was not acting "Wholly within its own sphere of authority" (*Parden v. Terminal Railroad Company*, 377 U.S. 184, at page 196).

Petitioners attack the opinion of the California Court on the ground that cases cited do not support the opinion. The California Supreme Court did not cite the *Parden* case as authority but merely as an example of the sphere of authority test. The other cases cited by the Court again were cited as examples of the principle that "sovereignty of one state does not extend into the territory of another so as to create immunity from suit" (see cases cited in opinion xiv, xv of Petitioners' Appendix).

V

NEVADA CONSENTED TO SUIT IN THE
STATE OF CALIFORNIA

As pointed out in the decision of the California Supreme Court, *Hall v. University of Nevada*, at page ix of Petitioners' Appendix, the State may declare that the use of the highway by the non-resident is the equivalent of the appointment of the registrar as agent on whom process may be served (*Hess v. Pawloski*, 274 U.S. 352; *Kroll v. Nevada Industrial Corp.* (1948) 65 Nev. 174, 191 P.2d 889, 893).

Section 13.025 of the Nevada Revised Statutes also provided at the time the accident occurred that "any tort action against the State of Nevada which is based on the alleged negligence of a state officer or employee and in which the damages sought to be recovered are for physical injury or death, may be brought in a Court of competent jurisdiction in the county where the actual injury occurred." (Appendix).

CONCLUSION

The petition should be denied. The petitioners have failed to set forth sufficient grounds for this Court to entertain this petition and this Court should, as it did in the previous applications, deny the petition.

The petitioners seek an expansion of the sovereign power of the State of Nevada into the State of California and refuse to accept the rights of the State of

California to regulate its highways and to protect its citizens from injuries sustained as a result of negligent operation of motor vehicles in California.

The State of California clearly obtained jurisdiction over the driver-employee of the automobile owned by the State of Nevada by serving Summons and Complaint on the California administrator of his estate proceeding commenced in California. California clearly obtained jurisdiction over the State of Nevada and the University of Nevada through its long arm motor vehicle statutes.

Dated: May 4, 1978.

Respectfully submitted,
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(Appendix Follows)

APPENDIX

Appendix

Section 13.025 of the Nevada Revised Statutes provides:

“Venue of actions against the State of Nevada.

(1) Except as provided in subsection 2, any action or proceeding against the State of Nevada shall be brought in a court of competent jurisdiction in Ormsby County.

(2) Any tort action against the State of Nevada which is based on the alleged negligence of a State officer or employee and in which the damages sought to be recovered are for physical injury or death may be brought in a court of competent jurisdiction in the county where the actual injury occurred.”

